United Nations A/HRC/35/32/Add.2

General Assembly

Distr.: General
27 April 2017

Original: English

Human Rights Council
Thirty-fifth session
6-23 June 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Mexico

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Mexico from 29 August to 7 September 2016.

GE.17-06772(E)
1706772

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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Mexico*

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* Circulated in the language of submission and Spanish only.

I. Introduction

1. Further to Human Rights Council resolutions 17/4 and 26/22, the Working Group on the issue of human rights and transnational corporations and other business enterprises, represented by two of its members, Pavel Sulyandziga and Dante Pesce, visited Mexico from 29 August to 7 September 2016, at the invitation of the Government. The purpose of the visit was to assess the efforts made to prevent and address adverse human rights impacts of business-related activities, in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.[1]

2. During their visit, the experts met with communities in Mexico City and the States of Mexico, Oaxaca, Jalisco and Sonora. The Working Group met with government officials from the ministries responsible for foreign affairs; the interior; the environment and natural resources; the economy; energy; labour; tourism; agriculture, livestock, rural development, fisheries and food; communications and transport; and finance and public credit. It also met with officials from the national commissions for the development of indigenous peoples and on water, on hydrocarbons, on food safety and quality, on the safety of genetically modified organisms and on aquaculture and fisheries; the agencies for security, for energy, for the environment and for airports and auxiliary services; the Federal Authority for the Development of Special Economic Zones; the National Fund for Tourism Development; the General Prosecutor's Office; the office of the Federal Attorney for Environmental Protection; the National Council for the Prevention of Discrimination; and the working group for developing the national action plan on business and human rights. The Working Group also met with officials of the States of Oaxaca, Jalisco and Sonora.

3. The Working Group also met with representatives of the National Human Rights Commission and the state human rights commissions of Oaxaca, Jalisco and Sonora; members of Congress (Chamber of Deputies and Senators); representatives of the National Supreme Court of Justice; Nacional Financiera, an industrial development bank; the Mexican stock exchange; the confederation of chambers of industry of Mexico, United Nations agencies in Mexico; representatives from a range of business enterprises, including Grupo Bal, Grupo Bimbo, Eólica del Sur, CEMEX, Grupo México, Goldcorp, the Federal Electricity Commission, and Petróleos Mexicanos; representatives of civil society organizations; and human rights defenders and members of affected communities.

4. The Working Group thanks the Government for its support and facilitation of the visit, and its willingness to engage in a discussion on current initiatives and challenges faced in aligning policies and practices with the Guiding Principles. It also thanks the organizations, communities and representatives of business enterprises with whom it met for their openness and willingness to engage in a dialogue.

II. General context

5. Over the past years, international and national organizations and human rights mechanisms have drawn attention to serious human rights challenges facing Mexico. The country experiences high levels of violence, insecurity and impunity, compounded by persistent problems of corruption and organized crime.[2] The country also faces high levels of poverty and inequality. Almost half of the total population of 119.5 million lives in poverty.[3] There have been important legislative developments and public policies to address these human rights challenges, including recent initiatives to better align policies and practices with the Guiding Principles on Business and Human Rights.

6. As underlined in the Guiding Principles, apart from the obligation of Governments to effectively protect against business-related human rights violations, business enterprises

[1] A/HRC/17/31, annex.
[2] See, for example, A/HRC/32/39/Add.2 and A/HRC/28/68/Add.3.
[3] See HRI/CORE/MEX/2017, para. 39.

have a responsibility to respect human rights, independent of the State's ability to fulfil its own human rights obligations.

7. The Working Group observes that one main concern about business-related human rights abuse relates to inadequate human rights due diligence on the part of the Government and business enterprises in the design and implementation of large-scale projects, and in providing adequate reparation for harm caused. These are mainly projects in the sectors of mining, energy, construction and tourism, often affecting indigenous communities. Other main concerns relate to labour rights and the capacity of the Government to effectively oversee compliance with labour and environmental standards. The urgency to attract investment, insufficient safeguards and a lack of capacity to enforce existing legislation creates an environment in which human rights can be abused with impunity.

8. The information presented by affected communities indicates that when human rights abuses occur, raising grievances is not easy and often results in retaliation, while access to remedy can be difficult to achieve. These trends are reflected in a document submitted to the Working Group by a coalition of more than 100 non-governmental organizations, summarizing over 60 specific cases of alleged business-related human rights violations in different regions of Mexico.[4] A recurrent concern raised was that the State was captured by corporate interests and that policy frameworks and commitments were not implemented in practice.

III. Legislative and policy framework

9. Mexico is a federal republic made up of 31 states and Mexico City, with each entity of the republic having its own constitution. The country has a solid legal framework for the protection of human rights. Importantly, following the constitutional reforms of 2011, article 1 of the national Constitution establishes that all persons shall enjoy the human rights recognized in the Constitution and in the international treaties to which Mexico is a party.

10. The Constitution also provides for the *amparo* procedure, by which private individuals can challenge before a federal judge the conformity of decisions of public authorities with constitutional provisions. As discussed further below, the *amparo* procedure is being actively used in cases of adverse business-related human rights impacts.

11. Mexico is party to all nine core international human rights treaties, and has ratified or acceded to seven of the nine optional protocols.[5] The country reports regularly to the human rights treaty bodies, and has issued a standing invitation to the special procedures of the Human Rights Council. Furthermore, since 2002, at the invitation of the Government, the Office of the United Nations High Commissioner for Human Rights has had an office in Mexico.

12. Mexico has ratified seven of the eight International Labour Organization (ILO) fundamental conventions, covering the freedom of association and the right to organize, equal remuneration, abolition of forced labour, abolition of child labour and elimination of discrimination in employment and occupation.[6] It has ratified 1 of the 4 ILO governance conventions, on tripartite consultation,[7] and 71 of 177 ILO technical conventions, including the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

13. Mexico is party to the main human rights instruments of the Inter-American system and recognizes the competency of the Inter-American Court on Human Rights.

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[4] See https://business-humanrights.org/sites/default/files/documents/Informe_Mx_Empresas_DDHH_68_0.pdf.

[5] See www.ohchr.org/EN/Countries/LACRegion/Pages/MXIndex.aspx.

[6] Mexico has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

[7] Mexico has not ratified the Labour Inspection Convention, 1947 (No. 81), the Employment Policy Convention, 1964 (No. 122) or the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

14. The Government's National Development Plan 2013-2018 specifies as a key policy objective to guarantee the respect and protection of human rights and the eradication of discrimination (goal 1.5). This goal is also reflected in constitutional reforms relating to transparency and access to public information and in new laws, such as the Law for the protection of human rights defenders and journalists and the General Law on victims.

15. The National Human Rights Programme 2014-2018 includes, for the first time, a specific reference to the promotion of human rights in policies and activities of business enterprises.

IV. Awareness of business and human rights

16. The Working Group notes that significant efforts are needed to raise awareness among business enterprises about their responsibility to respect human rights and exercise human rights due diligence, as set out in the Guiding Principles on Business and Human Rights. Increasingly, major companies publish annual non-financial sustainability reports. However, the Working Group did not see any examples of such reports demonstrating that human rights due diligence was integrated into a company's operations. To the extent that such reports include references to human rights, they typically refer to company policies in areas such as discrimination in the workplace and forced and child labour, but do not indicate how companies have sought to identify and prevent adverse human rights impacts, let alone address specific cases of such adverse impacts.

17. Several companies are members of the local United Nations Global Compact network and subscribe to the 10 Global Compact principles covering human rights, labour, the environment and anti-corruption. The Mexican Global Compact network actively disseminates information on these issues to its members, including through a number of specific guidance documents on business and human rights.

18. The Working Group was pleased to see that the National Human Rights Commission had taken the Guiding Principles fully on board. The Commission has published a booklet on the Guiding Principles and was actively seeking to raise awareness among businesses about the importance of human rights due diligence.

19. The Working Group observed some awareness about the business and human rights agenda among government agencies, including references to the Guiding Principles in some public information material. However, the Government has yet to provide clear guidance and set out clear expectations for business enterprises about their responsibility to respect human rights throughout their operations, both in Mexico and abroad. Likewise, the Government currently does not have clear guidance and policies to ensure that State-owned enterprises lead by example[8] and that the State uses its leverage to influence business conduct through its public procurement practices.

20. Another area requiring further attention by the Government is the policies and lending practices of national development banks. Such banks play an important role in providing financing for various development projects in Mexico. The Working Group met with representatives of one of the country's six development banks, Nacional Financiera. While engaged in a number of programmes aimed at the economic empowerment of women and youth, it was clear that Nacional Financiera has yet to integrate a human rights due diligence approach. Overall, the Working Group found that the banking sector in Mexico had, to date, paid little attention to its human rights responsibilities.

21. The Working Group noted with interest that, since 2011, the Mexican stock exchange has operated the Sustainable Price and Quotations Index, where 30 companies are listed. In 2014, the Mexican stock exchange joined the Sustainable Stock Exchanges Initiative.[9] The Working Group noted that there was currently no standard format for sustainability reporting, and that a guide for companies was being finalized.

[8] A/HRC/32/45.

[9] See www.sseinitiative.org/.

V. Human rights due diligence in the context of development projects

22. From the information received about the cases of alleged business-related human rights abuse, one recurrent theme is inadequate consultation with individuals and communities affected by major development projects. In meetings with public officials, the Working Group found evidence of a growing awareness of the deficiencies of past practice and of the need for a new approach of improved consultation and transparency, also prompted by civil society advocacy and the work of national human rights commissions.

23. The Working Group was able to discuss some of the cases in more depth with the involved stakeholders: Federal and State authorities, business enterprises, affected communities, representatives of the judiciary, including the Supreme Court, and national and state human rights commissions. The cases provide useful insights into main issues and challenges faced and into the measures that the Government and business enterprises need to take to better prevent, mitigate and remedy adverse business-related human rights impacts.

A. Wind-farm project

24. In Oaxaca, the Working Group heard the views of the various parties concerning a wind-farm project in the municipalities of El Espinal and Juchitán de Zaragoza implemented by the company Energía Eólica del Sur. Following the pattern of several similar cases, an *amparo* order issued by a federal court in December 2015 had brought this large development project to a halt. In this case, prior to the *amparo* order, a consultation process had been undertaken with the aim of obtaining the consent of the affected indigenous peoples over a two-year period. The consultation process had been overseen by a technical committee led by the Ministry of Energy and composed of competent federal institutions, together with the National Commission for the Development of Indigenous Peoples, the local authorities of the State of Oaxaca and the City Council of Juchitán de Zaragoza. After the consultation process, a group of members of the indigenous community of Juchitán de Zaragoza still did not agree to the project going ahead and filed an *amparo* lawsuit.

25. In August 2016, the *amparo* decision was revised and the project was allowed to go forward, as the consultation process was found to be lawful and in conformity with international standards. A group of the affected indigenous community of Juchitán de Zaragoza continued to resist the decision and 1,166 community members are seeking the intervention of the Inter-American Commission on Human Rights. There are reports of acts of intimidation against the community leaders who resist the project.

26. The company underlined to the Working Group that the Government had carefully undertaken the consultations with indigenous communities, in line with the standards set out in ILO Convention No. 169. Furthermore, the Ministry of Energy informed the Working Group that the communities had actively participated in the design and implementation of the protocol for the consultation process, since the objective was to design a project that could be accepted by the affected communities.

27. Some indigenous peoples the Working Group met expressed the view that the whole process of consultation was flawed, as windmill farms had already been set up in the region as part of other, previous projects unrelated to that of Energía Eólica del Sur, without any prior consultation. On the other hand, representatives of state authorities expressed frustration that the *amparo* order had delayed the project, with one state official commenting that the federal judge who had ordered the *amparo* did not appreciate the importance of the energy projects for the economic development of the state.

28. Further wind power projects are being planned in the same region, as part of the goal to produce from renewable sources 35 per cent of the energy consumed in Mexico by 2024, and the Working Group urges the authorities to continue efforts to ensure adequate prior consultation also for those new projects.

B. Cultivation of genetically modified soybeans

29. In another case involving Maya communities in Campeche and Yucatán, federal authorities granted a company permission to cultivate transgenic soybeans without consultation with the indigenous communities concerned. Among the grievances of the local communities were concerns about contamination of water sources by herbicides, deforestation and the impact on the traditional apiculture of the Maya community. This case alone has been subject to six separate *amparo* orders by three different district courts. The Supreme Court granted a suspension ordering a proper consultation with the indigenous communities, which was also supported by the National Human Rights Commission (recommendation 23/2015).

30. The authorities have shown a commitment to complying with this ruling, and the consultation is still in process. However, despite the suspension, there have been reported cases of illegal distribution and cultivation of genetically modified soybeans. In discussing lessons learned from the case with the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food, it was pointed out that there was a need for clear guidelines as to the processes of public consultations and consultations with indigenous peoples in the context of such development projects.

C. Toluca-Naucalpan highway project

31. The Working Group visited the Otomí-Mexica indigenous community in San Francisco Xochicuautla, State of Mexico, whose members have been resisting an expropriation order that was issued in 2012 without any prior consultation for a project to construct a highway through their ancestral lands. The community has been engaged in a sustained legal dispute with state authorities. In 2013, a federal judge issued an *amparo* ruling requesting the temporary suspension of the construction of the highway. The community has also petitioned the National Human Rights Commission and the Inter-American Commission on Human Rights; both institutions have requested the State of Mexico to adopt preventive measures to protect the Otomí-Mexica indigenous community.[10]

32. There are several reports of harassment and intimidation of community members who have protested against the project. In June 2015, 21 members of the indigenous community of San Francisco Xochicuautla began to receive protection under the national mechanism for the protection of human rights defenders. In September 2015, a risk assessment concluded that the community members were exposed to extraordinary risk, considering that the aggressions they had been subjected to by employees of the construction company commissioned to construct the highway had put their life at risk.

33. In February 2015, an *amparo* ruling by a federal judge (*amparo* No. 771/2015) ordered the definitive suspension of the project. Yet, despite these requests and in disregard of the judicial suspension, construction of the highway continued. On 11 April 2016, the construction company, accompanied by some 800 state police officers, destroyed property, including the house of one of the persons leading the opposition against the highway project — 1 of the 21 community members receiving protection under the national mechanism for the protection of human rights defenders.

34. This incident received considerable media attention, and led the state Government to halt the construction and to engage in further consultations with the community, mediated by the National Human Rights Commission. The Working Group also notes recommendation No. 56/2016, issued by the National Human Rights Commission in December 2016, concerning violations of the right to prior, free and informed consultation of the indigenous communities affected by the Toluca-Naucalpan, and calls on the authorities to ensure implementation thereof in collaboration with the affected

[10] Inter-American Commission on Human Rights, PM 277/13 of 11 May 2016, Members of the Otomí-Mexica indigenous community of San Francisco Xochicuautla, Mexico.

communities. The Working Group received worrying information that an assembly of the community had been interrupted by armed state police officers on 3 March 2017, and calls on the Government to avoid the recurrence of these types of events.

35. The Working Group also sought to talk to representatives of the construction company Grupo Higa, but did not receive any reply to its requests. The Working Group notes that this was the single case of a company not being responsive to its request for direct interaction, and that it was difficult to find more information about the policies of Grupo Higa, as it did not have a functioning website.

D. Aqueduct project

36. In Sonora the Working Group met with state authorities and members of the Yaqui indigenous community who have been disputing a project promoted by the State of Sonora to construct an aqueduct that was authorized in 2011 by the Ministry of Environment and Natural Resources. The case was subject to a ruling by the Supreme Court in 2011, in which the Court requested that adequate consultations be held with the affected communities, as well as to recommendations of the National Human Rights Commission (No. 37/2012 and No. 43/2015), in which the Commission also expressed concern about cases of repression against human rights defenders from the Yaqui community. The security situation in the community is alarming, with reports of several community members having been intimidated, detained, attacked and even (forcibly) disappeared, which has led several national and international human rights bodies, such as the Inter-American Commission on Human Rights, the Committee on Enforced Disappearances and the national mechanism for the protection of human rights defenders, to take action related to the case.

37. State government officials informed us that the change of the state Governor in September 2015 had led to a new working relationship with the Yaqui indigenous community. Soon after taking office, the new Governor released Yaqui leaders who had been imprisoned and convened a meeting with Yaqui representatives. However, the Working Group has received information about further tensions after its visit, including violent confrontations on 21 October 2016 between members of the Yaqui tribe related to a dispute about whether to allow a gas pipeline to cross their traditional lands.

E. General observations

38. A general feature of the cases presented to the Working Group is a lack of human rights due diligence in the form of adequate prior consultation with affected communities, leading to "lose-lose" situations of social conflict, human rights abuse, reputational damage for companies and financial losses for investors. As the Guiding Principles underline, adequate consultation with communities affected by business operations is a central aspect of human rights due diligence, as it is of critical importance to identify risks to human rights before undertaking projects as well as concerns and grievances that may arise.

39. Several of the business enterprises the Working Group spoke with underlined that consultation with affected communities was not their responsibility, but rather the competence of Government authorities. In this regard, the Working Group would like to stress that business enterprises have a responsibility to respect human rights independent of States' abilities and/or willingness to fulfil their own human rights obligations. Business enterprises are expected to undertake adequate human rights due diligence, to prevent and address adverse human rights impacts, including impacts caused by others they are directly linked with through their activities, products and services (their business relationships), which can include government entities.

40. With regard to indigenous peoples, their right to be consulted is enshrined in article 2 (B) of the Constitution. Moreover, in a ruling of 2013, the Supreme Court underlined that public authorities have an obligation to consult with indigenous peoples before taking any

action or measure that is likely to affect their rights and interest.[11] Finally, the Government of Mexico is bound by standards of international human rights instruments in this field, including ILO Convention No. 169.

41. In response to multiple cases of projects initiated without adequate consultation with affected indigenous peoples, the National Human Rights Commission in July 2016 issued recommendation No. 27/2016 on the right to prior consultation of indigenous peoples and communities. In the recommendation, the Commission underlines that in accordance with ILO Convention No. 169, consultation must be prior (to the authorization of a project), informed (providing clear and complete information about possible effects and risks), in good faith (so that it is not merely a process to legitimate a predefined outcome) and culturally adequate. Also, the consultation should be conducted with the objective of obtaining free, prior and informed consent.

42. The Working Group welcomes steps taken to clarify to relevant government authorities their obligation to undertake meaningful consultations with indigenous communities, notably the protocol adopted in 2013 by the National Commission for the Development of Indigenous Peoples on the implementation of consultations with indigenous peoples in conformity with ILO Convention No. 169.

43. The Working Group would also like to stress that human rights due diligence requires consultation not only with indigenous peoples, for which specific human rights standards apply, but also with all other affected communities. This approach is also outlined, for example, in the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector,[12] which underlines the role of companies in avoiding and addressing adverse human rights impacts.

VI. Human rights impacts related to industrial pollution

44. The Working Group visited the Sonora River, in the State of Sonora, and the Santiago River, in the State of Jalisco, to look into two cases of severe environmental pollution caused by industrial activities. It met with inhabitants, civil society and community representatives, as well as representatives of companies and state authorities, in order to assess what measures had been taken to identify and prevent human rights risks and to mitigate adverse human rights impacts of the project.

A. Sonora River

45. The case of the Sonora River is considered to be the largest environmental disaster in the history of the country's mining industry. On 6 August 2014, Buenavista del Cobre, a subsidiary of Grupo México, spilled 40,000 m^3 of copper sulphate and heavy metals into a stream leading to the Sonora River. This environmental disaster affected approximately 22,000 people directly, including through its impact on livestock and crops, and 250,000 people indirectly, from seven municipalities located on the banks of the Sonora River: Arizpe, Banamachi, Huepac, Aconchi, San Felipe, Baviácora and Ures.

46. The Ministry of Environment and Natural Resources and the office of the Federal Attorney for Environmental Protection found 55 irregularities in the activities of the mining company, and the company was given a fine of 23 million pesos (about US$ 1.8 million). The company also collaborated with the Government in establishing a trust fund of 2 billion pesos in order to ensure redress, reparation and compensation for economic and environmental damages and health problems caused in the communities affected by the spill.[13] In addition, Grupo México committed to take a number of measures, including

[11] See http://sjf.scjn.gob.mx/sjfsist/Paginas/DetalleGeneral.aspx?ID=2004170&Clase=DetalleTesisBL.

[12] Available from https://mneguidelines.oecd.org/stakeholder-engagement-extractive-industries.htm.

[13] See www.fideicomisoriosonora.gob.mx/fideicomiso.html.

installing 28 water treatment plants with technology to filter out heavy metals and building a clinic to treat those whose health was affected.

47. The state human rights commission informed the Working Group that it had no mandate to investigate the matter, since issues related to environmental contamination fell under federal jurisdiction. However, the state human rights commission had requested the office of the Federal Attorney for Environmental Protection to file a criminal complaint against the company, but there had been no follow-up. The Federal Attorney's Office, in turn, informed the Working Group that it had filed a criminal complaint with the Attorney General's Office, and had assisted in providing expert advice and opinions, but that the follow-up of criminal cases was the responsibility of the Attorney General's Office.

48. Affected communities raised a number of concerns related to a lack of consultation about the use of the trust fund; a perception that compensation was determined arbitrarily, for example compensation was provided up to a maximum number of livestock, irrespective of the number of livestock affected; a lack of transparency about the level of contamination and plans for the recovery of the river; and the non-fulfillment of the company's commitments to build water treatment plants and a health clinic.

49. The state authorities also said that Grupo México had not fulfilled its obligations, confirming that only 1 of the promised 28 water treatment plants had been built and it was not fully functional, while the health clinic had never been completed, as the Working Group was able to confirm during its visit to the site.

50. The Working Group raised these issues with representatives of Grupo México, and was told that the reason why construction of the treatment plants and the clinic had not been completed was that it would have been irresponsible to do so given that the municipal authorities did not have the capacity to operate them. They stressed how the company had voluntarily agreed to the trust fund and to include claims for compensation from people along 250 km of the river, rather than the 50 km that was established by law. They expressed regret that affected communities considered they were not adequately informed, but stressed that it was the federal Government's role to provide such information, and that some of the information was confidential given the ongoing mediation process.

51. The Working Group underlined that there was significant room for improvement with regard to dialogue, communication and transparency, and encouraged the company to pay more attention to critical voices. The Working Group considers that there is a need for the Government to provide clear information to the population and guidance for the determination of compensation.

B. Santiago River

52. In Jalisco the Working Group considered the case of the Santiago River, deemed the most polluted river in Mexico. Since 2002, discharge from over 300 companies established in the Ocotlán-El Salto industrial corridor has been flowing into the river. One of the most polluted parts of the river flows through the municipalities of Juanacatlán and El Salto, located 35 km from the city of Guadalajara. More than 300,000 inhabitants live in the municipalities, but the affected population could include the 7.5 million people living in the watershed of the river. The main effluents are derived from the metal mechanics and metallurgy, chemical-pharmaceutical, electronics, automotive and food and beverage industries. A study conducted by the Mexican Institute of Water Technology found a total of 1,090 toxic substances, chemicals and metals in the river, mainly from industrial sources. The view of the river covered by foam and the smell of the strong gases and odours that dispersed as the water flowed over the El Salto waterfall made a strong impact. Local doctors cited an increase in the incidence of different health problems, including leukaemia, miscarriages and congenital birth defects.

53. In the case of the Santiago River, the affected communities prompted the creation of "dialogue tables" to find solutions with the federal and state governments. Communities expressed frustration that their concerns were not being heard or resulting in any response.

Despite the obvious exposure to hazardous industrial contamination, the burden of proof is on victims who are suffering health impacts.

54. State authorities said they were very much aware of the problem, but emphasized that it was a federal matter, and that repeated efforts had been made to set up a working group with federal authorities to discuss a plan to rehabilitate the river. They also underlined that it was the competency of federal and municipal authorities to oversee the compliance with environmental standards.

55. As in the case of the Sonora River, the distribution of responsibilities and competencies among agencies at the federal, state and municipal levels appeared to be an obstacle to effective oversight. Also, as in the case of the Sonora River, the federal authorities were seen to not assume their responsibilities, which is limiting corrective actions.

C. Environmental and social impact assessments

56. The Working Group identified a need to strengthen oversight and assessment of environmental and social impacts to avoid or mitigate the actual and potential adverse impact of business activities on human rights. The State needs to incentivize and require human rights due diligence by business enterprises, especially when the nature of business operations or operating contexts pose significant risk to human rights. The human rights due diligence process should assess actual and potential impacts and seek to prevent or mitigate adverse human rights impacts. The process should include assessing, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed.

57. The General Law on Ecological Balance and Environmental Protection of 1988 and its regulation on impact assessment regulate the obligation for businesses to conduct environmental impact assessments of their activities. These assessments need to be prepared according to specific guidelines. While focusing primarily on impacts on the physical environment, they also address certain demographic and sociocultural aspects. One requirement is that the promoter of a project must publish an extract of the project in a newspaper that is widely circulated in the relevant region, so that interested parties can know about the project and how it might affect them. In cases of projects that could have serious impacts on the environment or on public health, the Ministry of Environment and Natural Resources, in coordination with local authorities, may decide to organize a public information meeting.

58. The Working Group learned about the limited capacity of the relevant authorities to carry out inspections to control environmental pollution by business enterprises. The office of the Federal Attorney for Environmental Protection is responsible for inspecting and supervising 200,000 potentially polluting companies, with a view to avoiding and controlling environmental pollution, but has only 300 inspectors. The Working Group was informed that there is a restriction on the number of days inspectors can travel to conduct in situ visits, and that such visits are often announced 24 hours in advance, which could give time to clean up operation sites before inspections.

59. The Working Group observed that the office of the Federal Attorney for Environmental Protection lacks the means to undertake effective inspections, while local authorities have no authority to do so; consequently, the operations of companies may not be properly monitored. A representative of one of the businesses operating along the Santiago River explained to the Working Group that the current lack of effective inspections was a problem for those companies that diligently complied with regulations and did not contribute to the pollution. Authorities should engage with responsible business leaders to find practical solutions and prevent impunity.

60. The Working Group was encouraged to learn about new legislation, in the framework of the reform of the energy sector, that incorporates the concept of sustainable development. The Electricity Industry Law and Hydrocarbons Law, both of 2014, include a

requirement for businesses to undertake social impact assessments with a human rights-based approach in the realization of their projects.

61. The Electricity Industry Law establishes that electricity infrastructure projects must provide a social impact assessment (art. 120), and should comply with sustainability principles and respect the human rights of local peoples and communities (art. 117). The law also specifies that the Ministry of Energy should inform businesses about the presence of social groups in situations of vulnerability in areas of planned projects (art. 118), and that the Ministry should carry out the necessary consultations to safeguard the interests and rights of communities and indigenous peoples (art. 119).

62. It was not clear to the Working Group to what extent social impact assessments included due diligence on human rights impacts, and it noted the weak capacity to evaluate the impact assessments that are presented by companies. Representatives of corporations who met with the experts indicated that expectations set by the Government were very general and unclear. Diligent companies would welcome more clarity and a reinforcement of the capacity of government authorities to oversee and support social and environmental impact assessments.

VII. Specific issues and groups

A. Labour rights

63. With regard to labour rights, the Working Group learned about some of the main challenges faced, including the precarious situation of temporary contract workers, the lack of access to social security, the low wages and a minimum wage that is currently set at a level that does not cover the basic food basket and is insufficient to allow workers to support themselves and their families. Another issue raised by Government and civil society representatives was the weak capacity of the labour inspectorate to effectively monitor compliance with labour standards. Equally, effective monitoring is made difficult by the fact that some 57.2 per cent of the workforce are employed in the informal sector.[34] The Ministry of Labour and Social Welfare informed the Working Group that between 2013 and June 2016 the number of labour inspectors had increased from 776 to 926.

Trade unions

64. During its visit the Working Group heard several concerns expressed about restrictions on freedom of association of workers. Similar concerns have repeatedly been raised by the Committee of Experts on the Application of Standards of the ILO about non-compliance with the ILO Freedom of Association and Protection of the Right to Organize Convention.[35]

65. One main concern relates to the practice of "protection contracts": collective agreements signed between an employer and a non-representative union leader, often without the participation of the workers and without their knowledge. These kinds of contracts have been widely used by employers to fix wages and conditions of work. In this regard, the Working Group notes that in addition to the ILO and Mexican independent trade unions, a number of business enterprises have also raised concerns with the Government about a lack of respect for workers' rights to freedom of association, including in a joint letter of 22 September 2015 sent to the President of Mexico by eight international apparel brands.

[34] See http://www3.inegi.org.mx/sistemas/temas/default.aspx?s=est&c=25433&t=1. See also www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_245619.pdf

[35] See, for example, www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3241939

66. The Working Group welcomes that, in response to concerns raised, a reform of the federal labour law was presented to the Senate in April 2016 and approved by Congress in February 2017.

Temporary workers

67. The Working Group also heard about the rise of temporary jobs, resulting in a worsening of wages and working conditions. While under the labour law companies cannot outsource to temporary employers work that is a core function to a company, there is evidence that this is not respected in practice. A report on working conditions in the electronic industry in Mexico found that about half of the workers of the sector were outsourced and were hired through temporary agreements of 1 to 12 months.[16]

Agricultural day labourers and migrant workers

68. Another concern is the situation of day labourers (*jornaleros*) and farm workers (*peones*) working on large plantations. Their dramatic situation is borne out by the official statistics: out of a total of 2.42 million day labourers and farm workers (making up 44 per cent of the total agricultural workforce), more than 800,000 (34 per cent) receive no remuneration, while another 750,000 (31 per cent) only earn up to the minimum salary.[17]

69. A significant part of the agricultural day labourers are migrant workers, a majority of which migrate from southern states to the north, following the harvest seasons. The National Human Rights Commission has documented several cases of abusive working conditions of migrant day workers, who often travel with their children.[18] The Working Group learned that the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food, together with other government agencies, has initiated an intersectoral effort to strengthen oversight of labour conditions of agricultural day workers. Also, the Ministry of Labour and Social Welfare informed the Working Group about a protocol on the working conditions of agricultural workers, which serves as a guide in labour inspections for verifying that employers respect the rights of workers.

70. The Ministry of Labour and Social Welfare reported that, from September 2015 to June 2016, 121 labour inspections had been carried out in agricultural fields, where 7,211 women and 15,587 men were employed. Those inspections revealed 962 cases of violations of labour standards.

Occupational safety and health

71. The Working Group learned about the programme on self-management in health and safety at work, aimed at incentivizing companies to establish and operate systems that ensure occupational safety and health protection in line with national and international standards. It was informed that 5,284 workplaces participate in the initiative, of which, in 2016, 1,635 had been certified as "Safe Companies". According to the Ministry of Labour and Social Welfare, the accident rate in the certified companies in 2016 was 0.85 accidents per 100 workers, which was 1.55 percentage points below the national average (2.4 accidents per 100 workers).

III. Child labour

72. In Mexico, child labour remains a major concern. According to national statistics (2015 data), some 2.48 million children in Mexico are involved in an economic activity, out of whom more than 1 million (41.1 per cent) are below the age of 15, and 900,000 (36 per

[16] Centro de Reflexión y Acción, "Paying the price for flexibility: workers' experiences in the electronic industry in Mexico" (2015), p. 36.

[17] See www.inegi.org.mx/saladeprensa/aproposito/2016/agricola2016_0.pdf.

[18] See www.cndh.org.mx/Migrantes.

cent) do not attend school.[18] In 2014 an amendment to article 123 of the Constitution raised the minimum age for admission to employment from 14 to 15 years, and in 2015, Mexico ratified the ILO Minimum Age Convention, 1973 (No. 138). A 2015 reform of the Federal Labour Law raised the minimum age for work considered unhealthy and dangerous to 18 years.

73. The National Development Plan 2013-2018 includes the policy objective of eradicating child labour. An interministerial commission for the prevention and eradication of child labour and the protection of young workers was established in 2013 and includes representatives of experts from international organizations and the business sector, workers and civil society organizations. Its purpose is to coordinate the agencies of the federal public administration in the design, implementation and evaluation of policies, programmes and actions to eradicate the worst forms of child labour by 2016 and to effect a 60 per cent reduction in child labour by 2018. As one of the measures taken, in 2015, a dedicated e-mail address was created to receive complaints from the public about cases of child labour. A protocol for the inspection of working places to eradicate child labour has also been developed by the Ministry of Labour and Social Welfare in collaboration with ILO.[20]

74. The Working Group also learned about the certification scheme entitled "Distinctivo Mexico sin trabajo infantil", started in 2014 with the aim of disseminating good practices and recognizing workplaces and institutions that have implemented labour practices that contribute to the prevention and eradication of child labour.

75. Another scheme was initiated in 2010, entitled "Distinctivo empresa agricola libre de trabajo infantil", to recognize workplaces in the agricultural sector with policies to prevent child labour. In 2016, the certification had been granted to 324 workplaces in 21 states.

76. The Working Group welcomes these significant initiatives for the prevention and eradication of child labour and encourages the Government of Mexico to continue to adopt measures to avoid the worst forms of child labour and to involve independent evaluators and civil society representatives in the process of certifying good business practices in this area.

C. Persons with disabilities

77. Another challenge in Mexico is to include persons with disabilities in the labour market. According to the Ministry of Labour and Social Welfare, some 7.2 million people (6 per cent of the total population) have some form of disability.[21] According to national statistics, the participation rate of persons with disabilities in economic activities is 39.1 per cent, which is 25.6 per cent below that of persons without a disability. The Working Group notes the existence of a national programme for work for and employment of persons with disabilities for the period 2014-2018, a national council for the development and inclusion of persons with disabilities, a general law for the inclusion of persons with disabilities (2011), a national programme for the development and inclusion of persons with disabilities, and provisions in the Federal Labour Law requiring workplaces with more than 50 employees to provide for adequate installations to be accessible for persons with disabilities (art. 132) and fiscal stimulus for workplaces that hire persons with disabilities.

D. Gender-based discrimination

78. Gender-based discrimination in employment is a serious concern. According to ILO, the labour force participation of women (42.2 per cent) is the lowest not only among

[18] See data from the National Institute for Statistics and Geography, available from www.inegi.org.mx/saladeprensa/aproposito/2016/infantil2016_0.pdf.

[20] Available from www.gob.mx/cms/uploads/attachment/file/25144/Protocolo_de_Inspeccion_en_Materia_de_Trabajo_Infantil_STPS.pdf.

[21] See www.inegi.org.mx/saladeprensa/aproposito/2015/discapacidad0.pdf.

Organization for Economic Cooperation and Development (OECD) countries, but also in the whole of Latin America. The employment rate for women is 44.6 per cent, 33.5 percentage points less than men, and the wage gap between men and women amounts to 18.3 per cent.[22] Discrimination faced by women is also reflected in a low number of women in decision-making positions both in the public and private sectors. Less than 5 per cent of companies registered on the Mexican stock exchange have female chief executive officers.

79. Between 2011 and 2016, the National Council for the Prevention of Discrimination received 1,726 complaints filed by women, among which 73 per cent relate to acts of labour discrimination or discrimination in the workplace. According to national statistics, 26.3 per cent of women report having faced discrimination in the workplace, and 14.9 per cent report discrimination related to pregnancy, such as having been requested to provide employers with pregnancy tests.[23] This is despite the fact that such discrimination and harassment is clearly prohibited and sanctioned in law.

80. The Federal Labour Law prohibits, and imposes penalties on employers for, discrimination in the workplace based on ethnic origin or nationality, gender, age, disability, social status, health condition, religion, migration status, opinions, sexual orientation, civil status or any other ground that offends against human dignity (art. 3). For example, if an employer does not respect the prohibition of discriminatory practices, the Labour Law provides for a penalty equivalent to between 250 and 5,000 times the minimum wage (art. 994, sect. VI).

81. The Working Group noted with interest the norm on labour equality and non-discrimination of 2015, jointly developed by the Ministry of Labour and Social Welfare, the National Institute for Women and the National Council for the Prevention of Discrimination. The norm is aimed at publicly recognizing workplaces that comply with equality and non-discrimination standards. It provides for a certification of companies that comply with 14 requirements; currently, 14 workplaces, among them private companies and public sector institutions, have been certified, as part of the effort to promote inclusive and non-discriminatory workplaces.[24]

E. Human rights defenders

82. Between 2010 and 2014, a total of 615 cases of human rights abuses against human rights defenders, including 36 murders, have been reported.[25] Several United Nations special rapporteurs have urged Mexico to take urgent action to address this alarming situation.

83. The Working Group heard testimonies from human rights defenders who explained that they faced continued attacks, threats, harassment and aggression because of their work to protect and promote human rights. Environmental human rights defenders and indigenous leaders in particular have been targeted when they have opposed development projects.

84. In a context of widespread cases of intimidation and harassment against community leaders who speak out against specific business operation and projects, the Working Group found the voice of business enterprises conspicuous by its absence. This is particularly worrying given reported cases of such intimidation and acts of violence being carried out by employees of, or those involved in business relationships with, those same companies.

85. Companies should have a strong incentive to clearly and publicly distance themselves from acts of violence and intimidation and to conduct their own human rights due diligence. A failure to respect human rights also carries a high financial cost, when

[22] See www.conapred.org.mx/index.php?contenido=pagina&id=562&id_opcion=703&op=703.
[23] See www.inegi.org.mx/saladeprensa/aproposito/2016/violencia2016_0.pdf.
[24] See www.gob.mx/cms/uploads/attachment/file/128194/Padron_de_CT_certificados_NMX.pdf.
[25] Inter-American Commission on Human Rights, *Situation of Human Rights in Mexico* (2015), available from www.oas.org/en/iachr/reports/pdfs/mexico2016-en.pdf.

projects are delayed due to inadequate human rights due diligence, and a company's reputation is damaged as a result of being associated with human rights abuse.

86. The Working Group recognizes that the Government has taken steps to protect human rights defenders, such as the national mechanism for the protection of human rights defenders, which currently protects 465 human rights defenders and journalists. Senior government officials have made statements to publicly acknowledge the critical role played by human rights defenders and civil society organizations, including journalists. However, too often cases of attacks against human rights defenders remain unpunished without effective investigations and sanctions. State and federal authorities must take a clear stance against such cases of attacks and intimidation.[26]

87. The media in Mexico also play an important role in shining a light on cases of human rights abuse. In this regard, the Working Group saw evidence of censorship and sanctioning of investigative journalists who have exposed conflicts of interest and corruption. The Working Group learned from one of the country's leading journalists how she and members of her team of investigative journalists had faced sanctions (dismissals from their work) and a series of lawsuits as a result of investigations into high-profile cases of corruption and abuse of power.

VIII. Access to remedy

A. State-based judicial mechanisms

88. The courts play a key role in protecting against business-related human rights abuse and violations. In this regard, the Working Group welcomes the efforts of the Supreme Court to provide guidance to lower courts on how to deal with such cases. In particular, the Working Group found very useful the 2014 protocol for action in cases related to development and infrastructure projects. The protocol provides specific guidance for 12 human rights found to be particularly at risk in the context of such projects, including the rights to due process, information, freedom of expression, adequate housing, food, water and sanitation.[27]

89. One of the main mechanisms available to victims to address human rights violations, including in the context of business operations, is the *amparo* procedure, set out in articles 103 and 107 of the Constitution, which can be applied by federal courts, including the Supreme Court. The *amparo* procedure serves as an ultimate resort to ensure the protection of individuals against violations of human rights guaranteed in the national Constitution and in the international human rights treaties to which Mexico is party.

90. One change introduced by the *Amparo* Law of 2013 is that any legal person can be considered a responsible authority when carrying out acts equivalent to those carried out by the State authorities that adversely affect the human rights of a third party. In other words, an *amparo* ruling can in principle be issued against actions or omissions by a business enterprise.

91. The large number of *amparo* orders in cases concerning business-related human rights harm would seem to be an indication that other means of mediation and dispute settlement are failing.

92. The Working Group heard of several cases where *amparo* rulings in favour of aggrieved individuals had not been duly complied with, seemingly without any legal consequences, weakening the effectiveness of the procedure and undermining the rule of law. The Supreme Court has also expressed concern about this state of affairs, noting that

[26] See also recommendations contained in the end of mission statement of the Special Rapporteur on the situation of human rights defenders on his visit to Mexico from 16 to 24 January 2017, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21111&LangID=E.

[27] Supreme Court, *Protocolo de actuación para quienes imparten justicia en casos relacionados con proyectos de desarrollo e infraestructura* (2014).

about one third of cases heard by the Court relate to the non-implementation of judicial orders by public officials.[28] This is despite a clear sanctioning of such non-implementation under the Constitution (art. 107, sect. XVI), which provides that if, after *amparo* is granted, the responsible official persists in repeating the contested act or attempts to evade the decision of the federal authority, he or she is to be immediately removed from office and taken before the appropriate district judge. The Government informed the Working Group that the situation had been improving and that since 2014 there had been a constant decrease of reported incidents of non-compliance with judicial orders.

93. Another limitation is that the *amparo* procedure is not easily accessible to victims. In this regard, the Working Group noted that in several cases *amparo* rulings that had been able to stop an ongoing human rights violation had been made possible only through the intervention of non-governmental organizations volunteering to assist and provide legal aid to victims.

B. State-based non-judicial grievance mechanisms

Human rights commissions

94. Mexico has a national human rights commission, established in 1990, accredited by the Global Alliance of National Human Rights Institutions as being in A-status compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Equally, each of the federal states, as well as Mexico City, has its own human rights institution. The commissions play an important role in helping victims of business-related human rights abuse to gain access to remedies. While, currently, these institutions do not have a mandate to deal directly with human rights cases related to acts or omissions of business enterprises, they do so indirectly by addressing acts or omissions of public authorities in such cases. The National Human Rights Commission and the state commissions the Working Group met with in Oaxaca, Jalisco and Sonora have all issued several recommendations related to the conduct of business enterprises.

95. The Working Group was particularly pleased to see that the National Human Rights Commission has taken the Guiding Principles fully on board. The Commission has published a booklet on the Guiding Principles and was actively seeking to raise awareness among businesses about the importance of human rights due diligence. The Commission is ideally placed to conduct such awareness-raising campaigns and to facilitate dialogue between the different parties.

96. The Working Group also welcomed that the Human Rights Commission of the Federal District, through its human rights and business programme, has emphasized the need to include a focus on the role of business in the implementation, monitoring, evaluation and financing of the Sustainable Development Goals and the New Urban Agenda.

Organization for Economic Cooperation and Development National Contact Point

97. The Working Group also met with the OECD National Contact Point, located since 2008 in the Ministry of Economy. Under the OECD Guidelines for Multinational Corporations, Mexico is obliged to establish a functioning national contact point, with adequate human and financial resources, to undertake promotional activities and handle specific cases ("instances") related to the implementation of the Guidelines, including the chapter on human rights aligned with the Guiding Principles. Thus, national contact points are meant to also serve as a grievance mechanism in cases of adverse impacts on human rights caused by multinational enterprises, including by Mexican companies operating abroad. In the case of Mexico, however, the national contact point has, to date, taken up a total of five cases and has focused primarily on awareness-raising efforts through meetings with companies.

[28] Ibid., p. 75.

C. Non-State-based grievance mechanisms

98. The Working Group notes that some of the large enterprises have different forms of company-based grievance mechanisms. However, in its conversations with representatives of business and other stakeholder groups, the Working Group did not hear of any cases where such mechanisms have been instrumental in detecting grievances at an early stage and more effectively preventing human rights impacts. While operational grievance mechanisms should not be a substitute for access to judicial mechanisms, ensuring easy access for workers and affected communities to grievance mechanisms, in line with the criteria set out in guiding principle 31, is a key component of the corporate responsibility to respect human rights.

IX. Strengthening the policy framework

99. The National Human Rights Programme 2014-2018 included, for the first time, a specific reference to the promotion of human rights in policies and activities of business enterprises. In particular, it includes five action points (strategy 4.4): (a) strengthen the mechanisms aimed at ensuring that business enterprises respect human rights; (b) encourage business enterprises to include human rights in their principles, codes and policies; (c) promote a human rights approach/focus in corporate social responsibility; (d) promote legislation to regulate business activities that guarantees human rights; and (e) ensure that business enterprises know their human rights responsibilities.

100. As a main step taken towards the implementation of these objectives, a process was initiated in December 2015 to develop a national action plan on business and human rights. The process is being led by the Ministry of the Interior together with the Ministry of Foreign Affairs and an intersectoral working group involving several ministries and representatives of business, civil society, trade unions and the United Nations system. The Working Group was able to participate in an extraordinary meeting of the national action plan working group and was encouraged by the seriousness of the endeavour and the constructive spirit of the dialogue.

101. The Government has commissioned a group of civil society organizations to prepare the baseline assessment that will inform the national action plan. The Working Group considers this to be a very good practice.

102. The Working Group looks forward to following this promising process, which has potential to instil a culture of dialogue across states, business and civil society. For the national action plan process to succeed, it will be critical to maintain its inclusive, multi-stakeholder nature in the development, implementation and monitoring phases.[29]

X. Conclusions and recommendations

103. **The Working Group observed a high level of distrust among different stakeholders. Inadequate levels of transparency and consultation with affected communities contribute to such distrust, while perceptions of corporate capture are reinforced by cases of harassment and intimidation against those who speak out about human rights abuse related to development projects and business operations.**

104. **Human rights defenders and journalists must be better protected to allow them to carry out their crucial role. In the face of widespread attacks and intimidation against people who speak up for their rights, Government officials at the highest level and chief executive officers of businesses must take a clear stance that intimidation of and attacks on human rights defenders are not acceptable and will not be tolerated.**

[29] See guidance published by the Working Group on national action plans on business and human rights, available from www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf.

105. **The Working Group also found a lack of practice or tradition for dialogue with communities in the context of large-scale projects and a strong need to design and implement effective mechanisms for consultation and strengthen a culture of social dialogue. Consultations must be undertaken as early as possible in the process of project design, and must leave open the option that some projects may not be viable.**

106. **In spite of the challenges faced, the Working Group is encouraged that there is a commitment on the part of the Government to move the business and human rights agenda forward. It is also encouraged by the fact that, despite high levels of violence and impunity, there is a thriving civil society in Mexico and open public debate, which will make progress possible.**

107. **The Working Group makes the following recommendations to the Government, business enterprises and civil society organizations.**

108. **The Working Group recommends that the Government:**

(a) **Build capacity and raise awareness among civil servants and lawmakers of the Guiding Principles on Business and Human Rights;**

(b) **Ensure prior and informed consultations with communities affected by planned development projects and business operations, initiated as early as possible in the process of determining project designs and assessing impacts, including through instructions to public officials about this requirement;**

(c) **Take additional steps to ensure compliance in practice with international standards on free, prior and informed consent of indigenous peoples;**

(d) **Provide guidance and set clear expectations for all business enterprises, including in the banking sector, about their responsibility to respect human rights throughout their operations, both domestic and international;**

(e) **Use its leverage to influence business practice, ensure that State-owned or controlled business enterprises lead by example, include human rights criteria in its public procurement practices and integrate human rights due diligence into the policies and lending practices of national development banks;**

(f) **Facilitate dialogue and mediation between business enterprises and communities affected by business operations and projects;**

(g) **Develop a national action plan on business and human rights on the basis of multi-stakeholder engagement, including representatives of civil society organizations, national business associations, sectoral trade unions and representatives of indigenous communities;**[30]

(h) **Make social impact assessments that integrate human rights standards (in line with the Guiding Principles) a requirement for major development projects in all sectors, and provide adequate resources to oversee and support such assessments;**

(i) **Strengthen the capacity of the office of the Federal Attorney for Environmental Protection to monitor the compliance of business operations with environmental standards;**

(j) **Strengthen the capacity of the labour inspectors to monitor compliance with labour standards, including working conditions of agricultural day labourers;**

(k) **Incentivize business to improve safeguards in areas such as occupational health and efforts to combat child labour, while ensuring that certification schemes to promote business "self-management" do not become substitutes for effective government oversight;**

(l) **Step up efforts to promote the inclusion of persons with disabilities in the workplace, following up on recommendations made by the Committee on the Rights**

[30] See the Working Group's guidance on national action plans.

of Persons with Disabilities to implement affirmative action measures both in the public and private sectors;[31]

(m) Step up efforts to address gender-based discrimination and sexual harassment in the workplace, including through improved forms of grievance mechanisms;

(n) Address concerns about "protection contracts" to fully protect the right of freedom of association, seeking technical advice and assistance from ILO;

(o) Strengthen the national mechanism for the protection of human rights defenders, including through effective investigations and sanctions to address the conditions that place human rights defenders at risk;

(p) Establish mechanisms to provide legal assistance to victims;

(q) Review obstacles faced by victims in accessing an effective remedy, including as part of the national action plan process, with a view to strengthening judicial and non-judicial grievance mechanisms, in line with recommendations contained in the report of the United Nations High Commissioner for Human Rights on improving accountability and access to remedy for victims of business-related human rights abuse;[32]

(r) Ensure that *amparo* orders and other judicial decisions and suspensions are respected and implemented;

(s) Expand the mandates of national and state human rights commissions to enable them to investigate cases of human rights abuse caused by acts or omissions of business enterprises;

(t) Set up administrative grievance mechanisms to allow public authorities to detect grievances at an early stage and more effectively prevent against human rights abuse, following the example of the innovative grievance mechanism operated by the National Council for the Prevention of Discrimination;

(u) Strengthen the OECD National Contact Point, in line with best practices of other such mechanisms in other countries, to enable it to carry out its role to facilitate dispute resolution and handle specific complaints of alleged breaches of the human rights chapter of the OECD Guidelines for Multinational Enterprises, which is consistent with the Guiding Principles, both by multinationals operating in Mexico and by Mexican multinationals operating abroad.

109. **The Working Group recommends that all business enterprises, including private enterprises and State-owned enterprises, implement the Guiding Principles, and specifically:**

(a) Adopt a human rights policy and human rights due diligence procedures to identify actual and potential human rights risks, and to prevent, mitigate and account for how they address adverse human rights impacts;

(b) Increase transparency and openness to listen to critical voices, finding ways to facilitate dialogue and interaction with affected communities;

(c) Establish and run operational grievance mechanisms, alone or in collaboration with others, in line with guiding principle 31, in order to identify and address adverse impacts;

(d) Take a clear stance that intimidation and attacks on human rights defenders and investigative journalists who raise concerns about business operations are not acceptable and will not be tolerated;

[31] CRPD/C/MEX/CO/1.

[32] A/HRC/32/19 and Add.1.

(c) Adopt a comprehensive understanding of human rights due diligence encompassing the responsibility to prevent, mitigate and remedy adverse impacts caused by their activities, including in their supply chains;

(f) Ensure meaningful consultation with potentially affected individuals and communities, ensuring that they have timely and complete information about proposed projects or changes that may affect them, and accept that such consultation processes might result in a change to the project;

(g) Integrate human rights due diligence, in full and explicit alignment with the Guiding Principles, into sustainability reporting requirements of the Mexican stock exchange;

(h) Engage in the development of a national action plan on business and human rights.

110. **The Working Group recommends that civil society organizations:**

(a) Continue to raise awareness about the respective obligations and responsibilities of the Government and of business enterprises under international human rights law;

(b) Continue to champion the rights of affected communities and human rights defenders;

(c) Engage in developing a national action plan on business and human rights through multi-stakeholder dialogue, including the voices of affected communities.